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MAR 5 2003

2812  
PATENT APPLICATION

ATTORNEY DOCKET NO. 10004249-1

IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): CHARLES D. HOKE

Serial No.: 09/916,920

Examiner: Viktor Simkovic

Filing Date: 26 July 2001

Group Art Unit: 2812

Title: TUNABLE FABRY-PEROT CAVITY FILTER AND  
METHOD FOR MAKING AND USING THE FILTER

COMMISSIONER FOR PATENTS  
Washington, D.C. 20231

TRANSMITTAL LETTER FOR RESPONSE/AMENDMENT

Sir:

Transmitted herewith is/are the following in the above-identified application:

(X) Response/Amendment ( ) Petition to extend time to respond  
( ) New fee as calculated below ( ) Supplemental Declaration  
( ) No additional fee (Address envelope to "Box Non-Fee Amendments")  
( ) Other: \_\_\_\_\_ (fee \$ \_\_\_\_\_)

CLAIMS AS AMENDED BY OTHER THAN A SMALL ENTITY						
(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT	(3) NUMBER EXTRA	(4) HIGHEST NUMBER PREVIOUSLY PAID FOR	(5) PRESENT EXTRA	(6) RATE	(7) ADDITIONAL FEES
TOTAL CLAIMS		MINUS		= 0	X \$18	\$ 0
INDEP. CLAIMS		MINUS		= 0	X \$84	\$ 0
[ ] FIRST PRESENTATION OF A MULTIPLE DEPENDENT CLAIM						+ \$280 \$ 0
EXTENSION FEE	1ST MONTH \$110.00	\$410.00	2ND MONTH \$930.00	3RD MONTH \$1450.00	4TH MONTH	\$ 0
OTHER FEES						\$
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT						\$ 0

Charge \$ 0 to Deposit Account 50-1078. At any time during the pendency of this application, please charge any fees required or credit any overpayment to Deposit Account 50-1078 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 50-1078 under 37 CFR 1.16, 1.17, 1.19, 1.20 and 1.21. A duplicate copy of this sheet is enclosed.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit: 02-28-2003

Typed Name: Linda Frye

Signature: Linda Frye

Respectfully submitted,

CHARLES D. HOKE

By Lawrence A. Maxham

Lawrence A. Maxham

Attorney/Agent for Applicant(s)  
Reg. No. 24,483

Date: 02-28-2003

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- Attach as First Page to Transmitted Papers -

"PATENTS"

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
CHARLES D. HOKE ) Group Art Unit: 2812  
SERIAL NO.: 09/916,920 )  
FILED: 26 July 2001 )  
FOR: TUNABLE FABRY-PEROT CAVITY )  
FILTER AND METHOD FOR MAKING )  
AND USING THE FILTER )

Commissioner for Patents  
Washington, D.C. 20231

Sir:

**RESPONSE TO REQUIREMENT FOR RESTRICTION**

Responsive to the Office Letter of 6 February 2003, Applicant provisionally elects Group I, claims 1-20, with traverse.

Claims 1-20 are directed to a device, that device being a tunable Fabry-Perot filter. According to claim 1, a pair of opposed reflective surfaces define a cavity in which is a nano-dispersion of liquid crystals.

Claims 21-30 are directed to a method of making the filter of claim 1 by providing a cavity between a pair of opposed reflective surfaces and placing a nano-dispersion of liquid crystals "in an irregular array in a metal-oxide matrix" in the cavity (claim 21).

The result of claim 21 is the structure of claim 1. The structure of claim 1 is made by the method of claim 21. Separate and distinct inventions are not involved.

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The purpose of 35 U.S.C. 121 is not to charge the Examiner to be a super-inventor, nor to use unfounded imagination. To say, as did Mr. Simkovic, that "the cavity between the reflective surfaces could be etched out of one substrate rather than placing two surfaces together" bears no relationship to the invention. Mr. Simkovic has cited no reference which shows that one can build a nano-dispersion of liquid crystals between two reflective surfaces where the space between the surfaces was created by etching. However, claims 1 and 21 are not so limited that the opposed reflective surfaces and cavity could not be formed by etching.

Accordingly, Applicant requests reconsideration and withdrawal of the restriction requirement. According to 37 CFR 1.41(b), where the device and process are not distinct, the method of using the device may be joined with the other two groups of claims. Thus, all 32 claims in this application should proceed together and be examined on their merits.

Should any issues remain unresolved, Mr. Simkovic is invited to telephone the undersigned attorney.

Respectfully submitted,

CHARLES D. HOKE



Dated: 28 February 2003

By:   
Lawrence A. Maxham  
Attorney for Applicant  
Registration No. 24, 483

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